

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MR. JOHN WM. SUMTER	:	CIVIL ACTION
	:	
v.	:	
	:	
PENNA. DEPARTMENT OF CORRECTIONS	:	NO. 14-4841
AT COAL STATE INSTITUTION, et al.	:	

MEMORANDUM

JOYNER, J.

AUGUST 25, 2014

Plaintiff John Sumter brought this action, apparently pursuant to 42 U.S.C. § 1983, against the “Penna. Department of Corrections at Coal State Institution,” “Factuality’s of Staff,” and “Camp Hill, State Corrections Institution.” He seeks leave to proceed *in forma pauperis*. The Court will grant plaintiff leave to proceed *in forma pauperis* and dismiss his complaint.

The complaint contains unclear, disjointed allegations and is difficult to understand. It appears that Plaintiff’s claims are based on his belief that he is wrongfully incarcerated as well as allegations that family members of his were murdered. Plaintiff appears to be claiming that he identified an individual responsible to those or other murders and attempted to procure that individual’s arrest. He also references a *habeas* petition that he filed in this district, which was denied. *See Sumter v. Cohen*, E.D. Pa. Civ. A. No. 13-2817 (Document Nos. 17 & 19).

Plaintiff requests “release [from] prison” and damages. (Compl. ¶ V.)

Plaintiff’s motion to proceed *in forma pauperis* is granted because he has satisfied the requirements set forth in 28 U.S.C. § 1915. Accordingly, 28 U.S.C. § 1915(e)(2)(B)(i) & (ii) require the Court to dismiss the complaint if it is frivolous or fails to state a claim. A complaint is frivolous if it “lacks an arguable basis either in law or in fact,” *Neitzke v. Williams*, 490 U.S.

319, 325 (1989). It is legally baseless if it is “based on an indisputably meritless legal theory,” *Deutsch v. United States*, 67 F.3d 1080, 1085 (3d Cir. 1995), and factually baseless “when the facts alleged rise to the level of the irrational or the wholly incredible.” *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). To survive dismissal for failure to state a claim, the complaint must contain “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotations omitted). “[M]ere conclusory statements[] do not suffice.” *Id.* As plaintiff is proceeding *pro se*, the Court must construe his allegations liberally. *Higgs v. Att’y Gen.*, 655 F.3d 333, 339 (3d Cir. 2011).

“[W]hen a state prisoner is challenging the very fact or duration of his physical imprisonment, and the relief he seeks is a determination that he is entitled to immediate release or a speedier release from that imprisonment, his sole federal remedy is a writ of habeas corpus.” *See Preiser v. Rodriguez*, 411 U.S. 475, 500 (1973). Accordingly, to the extent plaintiff seeks release from imprisonment in this civil rights action, his claims are not cognizable and, therefore, frivolous. Furthermore, “to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court’s issuance of a writ of habeas corpus[.]” *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (footnote and citation omitted). Here, nothing in the complaint reflects that plaintiff’s convictions or sentence have been overturned. To the contrary, it is apparent that he was denied *habeas* relief. Accordingly, any claims for damages based on his imprisonment are frivolous. To the extent plaintiff is bringing claims based on his identification of a murder suspect, nothing about his allegations

establishes a plausible basis for a timely claim against the named defendants or any other individuals.

For the foregoing reasons, the Court will dismiss plaintiff's complaint. Plaintiff will not be given leave to amend because amendment would be futile. An appropriate order follows, which shall be docketed separately.

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ORDER

AND NOW, this 25th day of August, 2014, upon consideration of plaintiff's motion to proceed *in forma pauperis* and his *pro se* complaint, it is ORDERED that:

1. Leave to proceed *in forma pauperis* is GRANTED.
2. Plaintiff John Wm. Sumter, #KN-8195, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b). Based on the financial information provided by plaintiff, an initial partial filing fee of \$0.72 is assessed. The Superintendent or other appropriate official at the State Correctional Institution at Coal Township or at any other prison at which plaintiff may be incarcerated is directed to deduct \$0.72 from plaintiff's inmate trust fund account, when such funds become available, and forward that amount to the Clerk of the United States District Court for the Eastern District of Pennsylvania, 601 Market Street, Room 2609, Philadelphia, PA 19106, to be credited to Civil Action No. 14-4841. After the initial partial filing fee is collected and until the full filing fee is paid, the Superintendent or other appropriate official at the State Correctional Institution at Coal Township or at any other prison at which plaintiff may be incarcerated, shall deduct from plaintiff's account, each time that plaintiff's inmate trust fund account exceeds \$10, an amount no greater than 20 percent of the money credited to his account during the preceding month and forward that amount to the Clerk of Court at the address provided above to be credited to Civil Action No. 14-4841.

3. The Clerk of Court is directed to send a copy of this order to the Superintendent of the State Correctional Institution at Coal Township.

4. The complaint is DISMISSED as frivolous and for failure to state a claim, pursuant to 28 U.S.C. § 1915(e)(2)(B)(i) & (ii), for the reasons discussed in the Court's memorandum.

5. The Clerk of Court shall CLOSE this case.

BY THE COURT:

s/J. Curtis Joyner

J. CURTIS JOYNER, J.